STATE OF MICHIGAN

COURT OF APPEALS

LORI L. STONE,

Plaintiff-Appellant,

v

DEPARTMENT OF MICHIGAN STATE POLICE,

Defendant-Appellee.

UNPUBLISHED
July 8, 2014

No. 314848
Court of Claims
LC No. 10-000033-MZ

Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

PER CURIAM.

Plaintiff appeals by right from an order of the Court of Claims granting defendant's motion for summary disposition under MCR 2.116(C)(7) (governmental immunity). We reverse.

I. BACKGROUND

On May 19, 2007, plaintiff, while in her vehicle, was separately struck by two Michigan State Police officers. Plaintiff filed a Verified Complaint against defendant on May 11, 2010, claiming defendant was responsible for the auto negligence of its officers. The complaint also averred that plaintiff filed a Notice of Intention to File a Claim ("the Notice") on or about November 15, 2007. Defendant filed its answer and affirmative defenses July 30, 2010.

Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7) on November 21, 2012, and arguments were heard December 5, 2012. Defendant argued plaintiff's Notice of Intention to File a Claim was defective for failure to comply with the notice provisions of the Court of Claims Act MCL 600.6401 et seq. Defendant asserted that the phrase "verified before an officer authorized to administer oaths" meant the required use of a jurat to show verification before an officer authorized to administer oaths. Plaintiff countered by urging a focus on the meaning of the term "verified" in the phrase "verified before an officer authorized to administer oaths" and argued that verification did not require the use of a notary jurat but should be understood in terms of MCR 2.114 in the absence of a statutory definition. Plaintiff asserted that if the Legislature had intended to require a notary seal or affidavit it would have used those words but, it did not. Further, that plaintiff's counsel was a notary and that the document was signed in front of him thus, satisfying the requirement that the Notice be signed in front of an officer authorized to administer oaths. Defendant responded that MCR 2.114 did not apply to cure the defective Notice because the Notice was not dated as MCR 2.114 required and

there was otherwise a statute, MCL 600.6431, which was clear as to the Notice requirements. Defendant contended that even if plaintiff's attorney was a notary, there was no evidence from the "four corners" of the Notice that it was signed and verified before an officer authorized to administer oaths.

The Court of Claims agreed with defendant that an attorney was not a person authorized to administer oaths and that plaintiff's attorney status as a notary was not evident from the "four corners" of the Notice. The court also determined that MCR 2.114 did not apply because the statute stated "[e]xcept where otherwise specifically provided by rule or statute, a document need not be verified or accompanied by an affidavit" and MCL 600.6431 was a statute that "otherwise" provided that the Notice needed to be verified. Further MCR 2.114(B) required a date and signature and the Notice here was not signed. Lastly, the court acknowledged that it found plaintiff's notice was not verified in compliance with MCL 600.6431 for the reasons specifically stated in defendant's reply brief. Defendant's reply brief additionally argued that the meaning of "verified before an officer authorized to administer oaths" should require the Notice "to be in the form of a notarized affidavit." The court therefore, adopted defendant's argument that plaintiff's Notice should have contained a notary jurat in order to fulfill the requirement of MCL 600.6431 that it be "verified before an officer authorized to administer oaths."

II. NOTICE OF INTENTION TO FILE A CLAIM IN THE COURT OF CLAIMS

A. THE PRECEDENTIAL VALUE OF *ROWLAND* AND *MCCAHAN*

This Court's analysis must begin with the cases of *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197; 731 NW2d 41 (2007), and *McCahan v Brennan*, 492 Mich 730; 822 NW2d 747 (2012). In both cases the plaintiffs were involved in an automobile collision with government owned vehicles and filed notices under MCL 600.6431 to apprise the government of their intent to file suit and seek damages for personal injury and property damage. In both *Rowland* and *McCahan* the issue was the timeliness of the plaintiffs' filing of their verified notice of intent to file a claim with the Clerk of the Court of Claims. *McCahan*, 492 Mich at 734. In each case notice was filed beyond the statutory allowed six month deadline.

In *Rowland*, our Supreme Court determined that the judiciary could not add an "actual prejudice" requirement to the notice provisions of MCL 600.6431 as a precondition to the state enforcing compliance with the statute. The Supreme Court reiterated the core holding from *Rowland* in its opinion in *McCahan*, "that such statutory notice requirements must be interpreted and enforced as plainly written and that no judicially created saving construction is permitted to avoid a clear statutory mandate." *McCahan*, 492 Mich at 733. It went further and clarified in *McCahan* that "*Rowland* applies to all such statutory notice or filing provisions, including" MCL 600.6431. *Id*.

Unlike *Rowland* and *McCahan*, the instant case does not involve an issue of timeliness. The holdings of both cases are still instructive in the regard that this Court is not to add to the specific notice and filing provisions of the statute when addressing whether plaintiff's Notice complied with the provisions of MCL 600.6431.

B. STATUTORY INTERPRETATION OF MCL 600.6431

Generally, in Michigan, governmental agencies cannot be sued for tort liability absent a statutory exception. See MCL 691.1401 et seq. Here, plaintiff's complaint alleged defendant was liable under the motor vehicle exception, MCL 691.1405, which provides that

> Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner[.][1]

As part of her suit plaintiff was also required to follow the notice and filing provisions of the Court of Claims Act, MCL 600.6401 et seq., in order to validate her claim. Specifically, MCL 600.6431 required plaintiff to file a Notice of Intention to File a Claim with the Clerk of the Court of Claims. MCL 600.6431 sets forth the provisions to be followed for filing a Notice of Intention to File a Claim in the Court of Claims.

> 600.6431. Notice of intention to file claim, contents, time, verification, copies
>
> (1) No claim may be maintained against the state unless the claimant, within 1 year after such claim has accrued, files in the office of the clerk of the court of claims either a written claim or a written notice of intention to file a claim against the state or any of its departments, commissions, boards, institutions, arms or agencies, stating the time when and the place where such claim arose and in detail the nature of the same and of the items of damage alleged or claimed to have been sustained, which claim or notice shall be signed and verified by the claimant before an officer authorized to administer oaths.
>
> (2) Such claim or notice shall designate any department, commission, board, institution, arm or agency of the state involved in connection with such claim, and a copy of such claim or notice shall be furnished to the clerk at the time of the filing of the original for transmittal to the attorney general and to each of the departments, commissions, boards, institutions, arms or agencies designated.
>
> (3) In all actions for property damage or personal injuries, claimant shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action.

---

[1] See also MCL 600.6475 ("In all actions brought in the court of claims against the state to recover damages resulting from the negligent operation by an officer, agent or employee of the state of a motor vehicle . . . of which the state is owner, the fact that the state, in the ownership or operation of such motor vehicle or aircraft, was engaged in a governmental function shall not be a defense to such action.")

Plaintiff submitted for this Court's review, a copy of her Notice of Intent to File a Claim and a certified letter from the Ingham County Court of Claims. The Notice designated the Michigan State Police as the department plaintiff filed her claim against. It also stated the time, May 19, 2007, and the place, at the intersection of M-52 and Werkner Road, Chelsea, Michigan, where the claim arose. The Notice further alleged damages plaintiff sought to recover by her claim. The Notice ended with the declaration: "I declare that the statements above are true to the best of my information, knowledge, and belief" which was followed by the signatures of the plaintiff, the salutation 'Respectfully submitted,' and the signature of her attorney. The Notice had a section titled "Dated:" but, there was no date next to it. The front page of the Notice also contained a "FILED" date stamp from the Ingham County Court of Claims for November 15, 2007. The accompanying certified letter from the Ingham County Court of Claims was dated November 20, 2007. It acknowledged receipt of plaintiff's Notice of Intention to File a Claim in the Court of Claims, confirmed that the Notice was filed on November 15, 2007, assigned a notice number, and indicated that copies were forwarded to an assistant attorney general and the Michigan State Police Department. Given the contents of the Notice, both parties agree that all conditions of MCL 600.6431 have been satisfied save one.

Our interpretation of any statutory language always begins with the objective of discerning the Legislature's intent. "This task begins by examining the language of the statute itself. The words of a statute provide 'the most reliable evidence of its intent....' " *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999), quoting *United States v Turkette*, 452 US 576; 101 S Ct 2524; 69 L Ed2d 246 (1981).

The issue before this Court is whether plaintiff complied with the provision that her Notice be "verified by the claimant before an officer authorized to administer oaths." MCL 600.6431(1). Because the statute provided no definition of the word "verified" nor the phrase "an officer authorized to administer oaths," for guidance, both parties looked elsewhere for definitions and examples that supported their positions. Plaintiff's counsel urged the trial court to adopt the definition of verification contained in MCR 2.114(B) and to except that plaintiff verified the information before him and that his status as attorney and notary made him an officer authorized to administer oaths.

1. The Authorization Requirement

Plaintiff's counsel argues that his status as attorney and notary made him "an officer authorized to administer oaths." We disagree.

The trial court was correct in concluding that plaintiff's attorney was not an officer authorized to administer oaths. Other than the instance where a particular officer is required, MCL 600.1440 only lists a justice, a judge, a clerk of a court, or a notary public as persons who may administer oaths. An attorney is not amongst those persons listed. Plaintiff also cites no statute specifically granting authority to attorneys, who are not notary publics, to administer oaths. Accepting as true that plaintiff's attorney was also a notary public, plaintiff's attorney failed to comply with the Michigan Notary Public Act, MCL 55.261 et seq. When a notary

public performs a notarial act[2], he is required to "print, type, stamp, or otherwise imprint mechanically or electronically" a notary jurat[3]. MCL 55.287(2). While no specific form is required, a jurat must convey all of the following information:

> (a) The name of the notary public exactly as it appears on his or her application for commission as a notary public.
>
> (b) The statement: "Notary public, State of Michigan, County of _____.".
>
> (c) The statement: "My commission expires _____.".
>
> (d) If performing a notarial act in a county other than the county of commission, the statement: "Acting in the County of _____.".
>
> (e) The date the notarial act was performed. [MCL 55.287(e).]

The fact that none of this information appeared on plaintiff's Notice is evidence that plaintiff's attorney was not acting in his notarial capacity.

Defendant, on the other hand, argues that proper authorization of a Notice by "an officer authorized to administer oaths" requires a notary jurat be displayed on the face of the Notice. Again, we disagree. We find that the trial court erred in concluding that plaintiff's Notice required a notary jurat in order to fulfill the condition of verification under MCL 600.6431. A "jurat" is "[a] certification added to an affidavit or deposition stating when and before what authority the affidavit or deposition was made." *Black's Law Dictionary* (8th ed). A Notice is neither an affidavit nor a deposition. The statute also neither states that a jurat is required nor that an affidavit must accompany the Notice. In accordance with the holdings of *Rowland* and *McCahan*, this Court will not add further requirements to the notice provisions of MCL 600.6431. The statute only requires verification on the part of the claimant and that the claimant performs the act of verification before an officer authorized to administer oaths.

---

[2] "'Notarial act" means any act that a notary public commissioned in this state is authorized to perform including, but not limited to, the taking of an acknowledgment, the administration of an oath or affirmation, the taking of a verification upon oath or affirmation, and the witnessing or attesting a signature performed in compliance with this act and the uniform recognition of acknowledgments act, 1969 PA 57, MCL 565.261 to 565.270." MCL 55.265(d).

[3] A "jurat" is defined as "a certification by a notary public that a signer, whose identity is personally known to the notary public or proven on the basis of satisfactory evidence, has made in the presence of the notary public a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed record." MCL 55.265(a).

2. The Verification Requirement

Plaintiff argues the definition of verification contained in MCR 2.114(B) should be used to interpret the meaning of verification in MCL 600.6431. We disagree.

The trial court correctly determined that MCR 2.114 is inapplicable here. MCR 2.114(A) clearly states that the rule applies to "all pleadings, motions, affidavits, and other papers provided for by these rules." The Notice of Intention to File a Claim is a document exclusive to the procedural requirements of the Court of Claims Act and not provided for in the Michigan Court Rules. The Court of Claims only enables the Michigan Court Rules to apply in the instance of pleadings, and therefore, does not apply to notices. MCL 600.6434. Further MCR 2.114's section on "Verification" states that "[e]xcept when otherwise specifically provided by rule or statute, a document need not be verified or accompanied by an affidavit." Not only do we have a statute here, MCL 600.6431, that specifically provides that the document must be verified, we also have instruction on how it must be verified. The requirement for verification under MCL 600.6431 is clearly different than that in MCR 2.114(B). MCR 2.114 gives the choice of verification by oath or declaration and does not require an officer authorized to administer oaths to be involved. The "[e]xcept when otherwise specifically provided by rule or statute" language in MCR 2.114(B)(1) demonstrates that MCR 2.114 is to be followed in the absence of a statute on point. To follow MCR 2.114 in this case would make the language "before an officer authorized to administer oaths" nugatory which works against the goal of statutory interpretation to give effect to every word in the statute. See *Allen v Bloomfield Hills School Dist*, 281 Mich App 49, 53; 760 NW2d 811 (2008) ("Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that renders nugatory or surplusage any part of a statute.")

"[V]erification is a certification of truth." *Jackson v City of Detroit Bd of Ed*, 18 Mich App 73, 80; 170 NW2d 489 (1969). It is also defined as "[a] formal declaration made in the presence of an authorized officer, such as a notary public, . . . whereby one swears to the truth of the statements in the document." *Black's Law Dictionary* (9th ed.)[4] Here, plaintiff's signature would suffice when under the declaration: "I declare that the statements above are true to the best of my information, knowledge, and belief" if verification alone and nothing more were required; however, MCL 600.6431 does require more. Effective verification under MCL 600.6431 is plaintiff certifying the truth of the document and doing so under oath. The statute implies that the claimant must also take an oath because of the requirement that her verification occur before an officer authorized to administer oaths. An oath is "an external pledge or asseveration made in verification of statements made, or to be made, coupled with an appeal to a sacred or venerated object, in evidence of the serious and reverent state of mind of the party, or with an invocation to a supreme being to witness the words of the party, and to visit him with punishment if they be

[4] "Undefined words are to be given meaning as understood in common language, considering the text and the subject matter in which they are used." *People v Lanzo Const Co*, 272 Mich App 470, 473–474; 726 NW2d 746 (2006).

false." *June v School Dist No 11, Southfield Tp*, 283 Mich 533, 537; 278 NW 676 (1938) (citation omitted).

Plaintiff's attorney submitted his own affidavit to this Court and argues that the affidavit cures the defect of failing to have a jurat or its equivalent on the face of the notice. We note that plaintiff's affidavit was executed some five years after the incident which gave rise to plaintiff's claim. Defendant does not contest that the attorney was in fact a notary at the time the plaintiff signed the notice. The defendant also does not contest that the plaintiff averred that the facts in the affidavit were true. The affidavit indicates that the plaintiff's attorney inquired as to the truthfulness of matters in the notice. The statute does not prescribe the kind of inquiry that must be made nor does any language in the statute require that evidence of the oath or affirmance be on the face of the notice.

Most importantly any error here was procedural not substantive. In *Tyra v Organ Procurement Agency of Mich*, 302 Mich App 208; 840 NW2d 730 (2013) the following was held with regard to statutory notice provisions in medical malpractice actions:

> It has essentially always been the rule in Michigan that defendants must "apprise the plaintiff of the nature of the defense relied upon, so that he might be prepared to meet, and to avoid surprise on the trial." Today, pursuant to MCR 2.111(F), a defendant waives any affirmative defenses not set forth in the defendant's first responsive pleading. An affirmative defense presumes liability and accepts a plaintiff's prima facie case, but asserts that the defendant is not liable for other reasons not set forth in the plaintiff's pleadings. We hold that failure to comply with purely procedural prerequisites for commencing a medical malpractice action is therefore an affirmative defense that must be raised or waived pursuant to MCR 2.111(F). [*Id*. at 212-213 (citations omitted).]

As in *Tyra*, the instant case involves plaintiff's failure to comply with purely procedural prerequisites for commencing a cause of action. Therefore, we conclude that defendant was required to raise the defense of non-compliance with the statutory notice provision as an affirmative defense and because it failed to do so, the defense is waived.

Reversed and remanded for further proceedings consistent with this opinion.

/s/ Mark J. Cavanagh
/s/ Donald S. Owens
/s/ Cynthia Diane Stephens